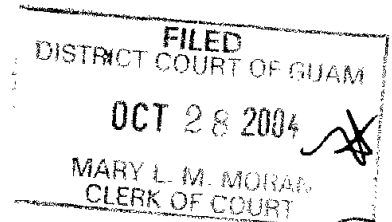


DOOLEY ROBERTS & FOWLER LLP
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865 South Marine Drive
Tamuning, Guam 96913
Telephone: (671) 646-1222
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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

JAY MERRILL, on his own behalf and on) CIVIL CASE NO. CIV04-00046
behalf of all other similarly situated voters)
desirous of casting a vote in favor of)
Proposal A at a fair and legal election,)

Plaintiffs,)

vs.)

**DECLARATION OF THOMAS L.
ROBERTS**

The Guam Election Commission; Gerald)
A. Taitano, and in his capacity as the)
Executive Director of The Guam Election)
Commission, I Mina' Bente Siete Na)
Liheslaturan Guahan (The 27th Guam)
Legislature); Felix P. Camacho, in his)
official capacity as the Governor Of Guam.)

Defendants.)

I, THOMAS L. ROBERTS, do hereby declare as follows:

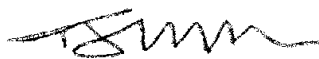
1. I represent the Plaintiffs in the above-captioned civil case. I make this declaration to inform the Court of matters that may affect its consideration of the above-captioned civil case, in which a notice of removal was filed by the Guam Attorney General's Office with this Court on October 26, 2004. The District Court Clerks have asked me to file a second Declaration in this case because the Declaration I delivered this morning to the court bore a double caption with Civil Case No. CIV04-00045, which precluded it from being "received" by the clerks.

2. Upon the representation of the Attorney General's Office that it would be representing all of the defendants in the above-captioned civil case, I signed a stipulation for declaratory and injunctive relief that has now been received by the District Court in this civil action. See Exhibit 1.

3. After the stipulation was delivered to the District Court, a letter written by Caesar Cabot, Esq. on October 27, 2004 to the Attorney General's Office was brought to my attention by my office staff. See Exhibit 2. In his letter, Mr. Cabot states, *inter alia*, that he represents the Guam Election Commission and the Executive Director of the Guam Election Commission.

4. On October 27 and 28, 2004, all Defendants and a proposed Intervener have filed papers through various attorneys in the Superior Court and/or the Federal District Court that are contrary to the positions taken by the Attorney General's Office in the stipulation filed in Federal Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of October, 2004 in Tamuning, Guam 96913



THOMAS L. ROBERTS



FILED

DOOLEY ROBERTS & FOWLER LLP
ATTORNEYS AT LAW

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RACHEL ZELLARS, Paralegal

Writer's Direct Email:
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October 27, 2004

Via Email Transmission

Robert Weinberg, Esq.
Office of the Attorney General
Suite 2-200E, Guam Judicial Center
120 West O'Brien Drive
Hagåtña, Guam 96910

Re: Aguon-Schulte v. The Guam Election Commission;
District Court of Guam Civil Case No. CIV04-00046

Merrill, et al. v. The Guam Election Commission;
District Court of Guam Civil Case No. CIV04-00045

Dear Rob:

This will confirm that you have represented to me that the Office of the Attorney General represents all of the named defendants in the above-referenced cases, excluding only Mr. Taitano in his individual capacity. In reliance on this representation, I have agreed to sign the stipulations we have discussed and to dismiss my claims against Mr. Taitano in his individual capacity without prejudice. Enclosed are copies of the dismissals I will file.

Sincerely,

DOOLEY ROBERTS & FOWLER LLP

Thomas L. Roberts

TLR/fad F:\Documents\Thomas L Roberts (07.04)\C325.CFED\C325 - Weinberg L01.doc

Enclosures

EXHIBIT

1

ATTORNEYS:

Cesar C. Cabot

David W. Hopkins

Of Counsel
Raymond C. Wagner

Law Offices of
CESAR C. CABOT, P.C.

A Professional Law Corporation

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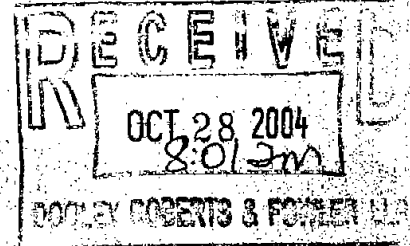
TELEPHONE: (671) 646-2001 • FACSIMILE: (671) 646-0777

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October 27, 2004

VIA FACSIMILE NO.: (671) 472-2493

Douglas B. Moylan, Esq.
Attorney General of Guam
Office of the Attorney General
Guam Judicial Center, Ste. 2-200E
120 West O'Brien Drive
Hagatna, Guam 96910



**Re: Proposal A Initiative Litigation; Aguon-Shulte v. GEC, et. al.
Superior Court of Guam; Civil Case No. CV1103-04 and
Merrill v. GEC, et al., Civil Case No. CV1111-04**

Dear Attorney General Moylan:

I am writing on behalf of the Guam Election Commission ("GEC") and its Executive Director. I acknowledge receipt of your letter dated October 27, 2004, regarding the aforementioned matter. With all due respect, I disagree with your intention to represent the GEC and Mr. Taitano in the aforementioned lawsuits.

Please be advised that I have been instructed by the GEC and Mr. Taitano to continue to represent their interest regarding the aforementioned lawsuits. 3 GCA §2103(b) makes it clear that the Commission may retain an attorney who shall advise the Board and its executive offices on all legal matters pertaining to the Commission. Section 2103(b) further specifically provides that "designated counsel shall represent the Commission in litigation in which the Commission is interested or involved". It is the position and desire of the GEC and the Executive Director that I continue to represent the interest of both parties, with respect to the aforementioned legal matters.

There are additional concerns that preclude your representation of the Commission. First, you are an elected official, presumably vying for re-election in the 2006 General Election, and your representation of the GEC may be a conflict of interest, or at the very least, shall create an appearance of impropriety.

Second, the Attorney General's Office has openly expressed its opinion that the GEC violated the Election Code in mailing out the allegedly defective ballot pamphlets. This clearly shows a propensity contrary to the views and strategies beneficial to the Guam Election Commission. Moreover, your legal opinion that the Proposal A vote is unenforceable, is not shared by the

EXHIBIT 2

Douglas B. Moylan, Esq.
Attorney General of Guam
October 27, 2004
Page 2 of 2

Commission nor its legal counsel, and for this reason your representation of the GEC and its Executive Director shall be a direct conflict of interest, prohibited by our ethical rules. While I certainly understand your legal views on the Proposal A vote and your entitlement to represent government agencies, I respectfully do not agree.

I shall be communicating with my clients, to ascertain the direction that the Commission would like me to take on this issue. Please be advised that until and unless I am instructed by a court of law to conduct myself otherwise, I shall continue to assert my representation of the GEC and its Executive Director. I regret any inconvenience this may cause, but thank you for your attention to this matter.

Sincerely,



CESAR C. CABOT

CCC:me

cc: Frederick J. Horecky, Esq., Chairman
Gerald A. Taitano, Executive Director
All Board Members, Guam Election Commission
Therese M. Terlaje, Esq., Legislative Counsel
Shannon J. Taitano, Esq., Governor's Legal Counsel

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